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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,475	04/12/2004	Winthrop D. Childers	200309746-1	4580

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EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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06/25/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/823,475	Applicant(s) CHILDERS ET AL.	
	Examiner NIHIR PATEL	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05.15.2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 and 29-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-25 and 38-41 is/are rejected.
- 7) ☒ Claim(s) 26-28, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09.15.2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of **Group I (claims 18-28 and 38-43)** in the reply filed on **May 15th, 2008** is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims **1-17 and 29-37** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on **May 15th, 2008**.

The requirement is still deemed proper and is therefore made **FINAL**.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims **18-20 and 38-41** are rejected under 35 U.S.C. 102(e) as being anticipated by Koerner et al. (US 2004/0195352).
5. **As to claim 18**, Koerner teaches an apparatus that comprises a first pressurized of fluid in a reservoir (**see paragraph [0021]**); a fluid conduit **7** (**see paragraph [0020]**)

Art Unit: 3772

from the supply to an ejector head **3** (see **paragraph [0019]**) and a valve **8** (see **figure 1; paragraph [0020]**) in the fluid conduit between the supply and the head, a programmable controller capable of operating the delivery apparatus in a first operational mode wherein the ejector head is operable to deliver fluid from the supply through the ejector head and a second maintenance mode wherein the ejector head is disabled and fluid is purged through the ejector head (see **paragraph [0023]**).

6. As to **claim 19**, Koerner teaches an apparatus that comprises pressure regulation apparatus in the reservoir to maintain the supply of fluid in a pressurized state (see **paragraph [0021]**).

7. As to **claim 20**, Koerner teaches an apparatus wherein the first operational mode fluid in the ejector head is at a lower pressure relative to the fluid in the reservoir (see **paragraph [0021]**).

8. As to **claim 38**, Koerner teaches an apparatus that comprises an ejector head **3** (see **paragraph [0019]**); a fluid supply system having a pressure regulation apparatus that supplies fluid to the ejector head at a controllable pressure (see **paragraph [0021]**); and a control system configured to control the fluid supply system in two different modes including an operating mode wherein the fluid is supplied to the ejector head with an operational pressure and an ejector head purge mode wherein the fluid supply pressure is at a purge pressure that is different from the operational pressure (see **paragraph [0023]**).

9. As to **claim 39**, Koerner teaches an apparatus wherein the ejector head includes thermal drop generators (see **figure 1; paragraph [0019]**).

Art Unit: 3772

9. **As to claim 40**, Koerner teaches an apparatus wherein the fluid at the operational pressure is at a negative gauge pressure (**see paragraph [0021]**).

10. **As to claim 41**, Koerner teaches an apparatus wherein the fluid at the purge pressure is at a positive gauge pressure (**see paragraph [0021]**).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims **21-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Koerner et al. (US 2004/0195352) in view of Poole (US 6,158,431).

14. **AS to claims 21-23**, Koerner substantially discloses the claimed invention; see rejection of claim 18 above, but does not disclose a sensor means (temperature sensor capable of measuring the temperature of a portion of the ejector head controlled by the programmable controller) for monitoring an operational aspect of the ejector head. Poole teaches an apparatus that does provide a sensor means (temperature sensor capable of

measuring the temperature of a portion of the ejector head controlled by the programmable controller) for monitoring an operational aspect of the ejector head (**see col. 12 lines 60-67**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Koerner's invention by providing a sensor means (temperature sensor capable of measuring the temperature of a portion of the ejector head controlled by the programmable controller) for monitoring an operational aspect of the ejector head as taught by Poole in order to provide more accurate dose of medicament and to prevent the liquid from jamming the ejector head.

15. **As to claim 24**, Koerner substantially discloses the claimed invention; see rejection of claim 18 above, but does not disclose a sensor means that comprises a counter for counting the number of times that the ejector head has been activated. Poole teaches an apparatus that does provide a sensor means that comprises a counter for counting the number of times that the ejector head has been activated (**see col. 13 lines 1-13**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Koerner's invention by providing a sensor means that comprises a counter for counting the number of times that the ejector head has been activated as taught by Poole so that the user knows a head of time when to replace the pressurized fluid reservoir.

16. **As to claim 25**, Koerner substantially discloses a clock for measuring the time interval from a prior maintenance mode (**see paragraph [0023]**).

Allowable Subject Matter

17. Claims **26-28, 42 and 43** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose a second pressurized supply of fluid in a reservoir and a fluid conduit from the second pressurized supply of fluid to the ejector head and a valve in the fluid conduit wherein the first pressurized supply of fluid comprises a medication and the second pressurized supply of fluid comprises a maintenance fluid.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772